

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

In the Office Action mailed June 26, 2006, claims 1-3 and 5-22 are pending. Claims 1-3 and 5-22 were rejected. The rejection is respectfully traversed. Without conceding the propriety of the rejection, claims 12 and 19. Claim 23 has been added. No new matter has been added.

The amendments to claim 12 merely clarifies what is being claimed and adds no new issues. The amendments to claim 19 also clarifies the means claim. Because the amendment to claim 19 is in accordance with what is described in the specification (and hence is what the examiner should have already examined as this is a mean for claim) no new issues are raised. New claim 23 is a dependant claim and is directed to subject matter the examiner addressed in the last office action and therefore raises no new issues. Entry and consideration of this amendment is proper at this, the after final rejection stage.

Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein.

The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

### **Claim Rejections – 35. U.S.C. §102(b)**

#### **Claims 1-3, 5-8, 12-19, and 21**

Claims 1-3, 5-8, 12-19 and 21 are rejected under 35. U.S.C. §102(b) as being anticipated over EP 139 289 to EI Dupont de Nemours (hereinafter referred to as "Barrett"). To anticipate a

claim, a single prior art reference must expressly or inherently disclose each and every element of the claimed invention. MPEP § 2131 (citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987)). Applicants respectfully submit that Barrett fails to meet this standard.

*Claim 1*

The prior art does not teach or suggest a combination having all of the features recited by claim 1. For example, claim 1 recites a combination, “wherein said closed end and said opened end are substantially equal in diameter.”

By contrast, Barrett is directed to necked bottle. The closed end and the open end are not of substantially equal diameter in the bottle of Barrett. Thus, the bottle of Barrett does not have the advantages of a closing system that fits substantially with in the bottle but Barrett is required to have a lid that is mostly external to the bottle.

Since each and every element, as set forth in the claim, is not found, either expressly or inherently described as required by the M.P.E.P. Barrett cannot be said to anticipate, each and every element as recited in claim 1. Claims 2-3, 5-11, and 23 depend from independent claim 1. Because claim 1 is believed to be in condition for allowance, claims 2-3, 5-11, and 23 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

*Claim 12*

For the reasons previously discussed, Barrett does not teach or suggest, at least, *inter alia*, “inserting at least most of the closure assembly into an opened end of the sample container” as recited in claim 12. As discussed above, Barrett has a lid that is mostly external to the bottle

(above the bottle and outside the diameter of the open end of the bottle). Only a trivial amount of the lit of Barrett is in the bottle, just enough to engage the threads. Because Barrett does not teach or suggest the method of claim 12, Barrett does not anticipate claim 12. Claims 13-18 depend from independent claim 12. Because claim 12 is believed to be in condition for allowance, claims 13-18 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

#### Claims 19-22

Barrett does not teach or suggest a combination having all of the features of claim 19. For example, claim 19 recited a method that includes among other things, “wherein the means for sealing said container is configured to be assembled external to the container”. In contrast, Barrett has a single piece lid and some of the other parts of means for sealing are not part of the lid. Since each and every element, as set forth in the claim, is not found, either expressly or inherently described as required by the M.P.E.P. Barrett cannot be said to anticipate claim 19. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 20-22 depend from independent claim 19. Because claim 19 is believed to be in condition for allowance, claims 20-22 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

#### Claim Rejections 35 U.S.C. §103(a)

Claims 9-11, 20 and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Barrett in view of Hagen. Claims 5-11 depend from independent claim 1. Because claim 1 is

believed to be in condition for allowance, claims 5-11 are also believed to be in condition for allowance, at least by reason of their dependency. Claims 20 and 22 depend from claim 19 which is believed to be in condition for allowance, and are therefore allowable at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

**CONCLUSION**

In view of the foregoing remarks, Applicants respectfully submit that this application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at 202-861-1792 in an effort to resolve any matter still outstanding before issuing another action.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036 with reference to our Docket No.87334.5740.

Respectfully submitted,

BAKER & HOSTETLER LLP



P. Alan Larson  
Reg. No. 53,184

Date: 10/20/06  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304  
Telephone: 202-861-1500  
Facsimile: 202-861-1783

101526420